

## Message Text

SECRET

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44

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 097095

O R 141809Z JAN 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 5639

INFO AMEMBASSY LONDON

AMEMBASSY NEW DELHI

AMEMBASSY OTTAWA

AMEMBASSY PARIS

USMISSION IAEA VIENNA

USMISSION USBERLIN

AMCONSUL BOMBAY

S E C R E T SECTION 01 OF 02 BONN 00664

EXDIS

E.O. 11652: GDS

TAGS: GW, WB, US, UK, FR, EMAE, ETRD, PARM, TECH

SUBJECT: BORSIG CASE AND NUCLEAR SUPPLIERS' GROUP

TRIGGER LIST

REFS: (A) BONN 20877; (B) STATE 304344; (C) USBER 1924,

ALL 1975; STATE 3720

SUMMARY: THE BRITISH HERE HAVE INFORMED US THAT THE FRG HAS DECIDED NOT TO INCLUDE A BERLIN CLAUSE IN ITS SIX NOTES REGARDING BONN'S COMMITMENT TO ABIDE BY THE POLICY GUIDELINES WORKED OUT BY THE NUCLEAR SUPPLIERS' GROUP IN LONDON LAST YEAR. THE BRITISH ALSO UNDERSTAND THAT THE FRG WILL SO INFORM THE ALLIES OF THIS INTENTION IN THE BONN GROUP. WHILE IT SEEMS THAT FROM THE "BERLIN" POINT OF VIEW THE FRG INTENTION IS PROBABLY CORRECT, WE ARE CONCERNED THAT ANY ALLIED EXPRESSIONS OF AGREEMENT MAY WEAKEN US CASE TO HAVE FRG AMT FUER GEWERBLICHE WIRTSCHAFT (AGW) INFORM SENAT OF CONTROLS NECESSARY TO EXPORT BORSIG COMPRESSORS. REQUEST

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GUIDANCE. END SUMMARY.

1. UK BONN GROUP REP (HITCH) SENT IDENTICAL LETTER TO US AND FRENCH COLLEAGUES ON JAN. 9 (RECEIVED JAN. 12) STATING THE FRG WILL INFORM THE BONN GROUP THAT A BERLIN CLAUSE OR BERLIN DECLARATION IS UNNECESSARY IN CONNECTION WITH THE FORTHCOMING EXCHANGE OF NOTES RESULTING FROM THE NUCLEAR SUPPLIERS' GROUP CONFERENCE HELD IN LONDON LAST FALL. HITCH SAID THE EXCHANGE OF NOTES IS SCHEDULED FOR JAN. 22 AND IT IS, THEREFORE, IMPORTANT THAT THE QUESTION OF APPLICATION IN BERLIN OF THE FRG'S UNILATERAL COMMITMENT TO ABIDE BY THE GROUP'S GUIDELINES SHOULD BE SETTLED QUICKLY.

2. HITCH'S LETTER STATES IT IS "OUR" VIEW (NOTE: PRESUMABLY FCO VIEW) THAT A BERLIN CLAUSE OR DECLARATION IS BOTH UNNECESSARY AND UNDESIRABLE. THE SOVIETS WOULD MAINTAIN THAT THIS WAS A MATTER AFFECTING "SECURITY" AND WAS THUS A MATTER FOR THE ALLIES AND NOT FOR FRG. THE USSR COULD BE EXPECTED TO PROTEST. THE LETTER SAYS A BERLIN CLAUSE SEEMS UNNECESSARY SINCE THE FRG "UNILATERAL COMMITMENT" WOULD NOT CREATE ANY NEW RIGHTS OR OBLIGATIONS UNDER INTERNATIONAL LAW AND THERE WOULD BE NOTHING EXCEPT ALLIED RIGHTS AND RESPONSIBILITIES TO PREVENT BONN FROM PURSUING IN RELATION TO BERLIN THE POLICY SET OUT IN THE NUCLEAR SUPPLIERS' GROUP GUIDELINES PAPER. HITCH THEN ASKED IN HIS LETTER THAT WE AND FRENCH ACCEPT FRG POSITION WITHOUT DEMUR IF THE SUBJECT CAME UP IN BONN GROUP.

3. THE FRG DID NOT, IN FACT, RAISE THIS MATTER AT JAN. 13 BONN GROUP MEETING. PRIOR TO THE MEETING WE HAD, BECAUSE OF POTENTIAL PROBLEMS WE SAW (SEE BELOW), ASKED HITCH AND THE FRENCH REP IF THEY WOULD NOT EXPRESS AGREEMENT TO FRG INTENTION BUT RESERVE POSITION UNTIL THERE WAS CHANCE TO STUDY ALL ITS POSSIBLE RAMIFICATIONS. BOTH AGREED.

4. FROM A "BERLIN" POINT OF VIEW, THE FRG INTENTION (AS REPORTED BY HITCH IN HIS LETTER) IS PROBABLY NOT CONTESTABLE. AS POINTED OUT BY USBER (REF C) THE  
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FRG ATOMIC LAW HAS BEEN EXTENDED TO BERLIN, BUT WITH MASSIVE RESERVATIONS (IN BK/0(61) 8 AND BK/O (67) 6), AND THE ALLIED LICENSING REVIEW COVERS MORE EXTENSIVE AREA THAN FRG REVIEW WHICH IS ALLOWED UNDER PORTIONS OF ATOMIC LAW FREE FROM ALLIED RESERVATIONS. AS USBER ALSO NOTED, WHILE FRG POSITION OBVIOUSLY CARRIES GREAT WEIGHT WITH SENAT, FRG STRICTLY SPEAKING HAS NO PROPER ROLE IN DECIDING WHETHER OR NOT EXPORT LICENSE SHOULD BE

GRANTED. THUS, SINCE THERE IS EVEN AT PRESENT NO LEGAL BASIS FOR FRG BINDING ACTION RE BERLIN IN THIS AREA, IT WOULD BE DIFFICULT FOR THE ALLIES TO ASSERT THAT THE FRG NOTES RE THE SUPPLIERS' GROUP GUIDELINES SHOULD HAVE

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 097133

O R 141809Z JAN 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 5640

INFO AMEMBASSY LONDON

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USMISSION IAEA VIENNA

USMISSION USBERLIN

AMCONSUL BOMBAY

S E C R E T SECTION 02 OF 02 BONN 00664

EXDIS

A BERLIN CLAUSE.

5. MOREOVER, INCLUSION OF A BERLIN CLAUSE WOULD BE LIKELY TO COMPLICATE THE EXCHANGE OF NOTES ON THE NUCLEAR SUPPLIERS' GUIDELINES. THE UK VIEW THAT THE SOVIETS WOULD PROTEST IS ALMOST CERTAINLY CORRECT. THE AK MIGHT ATTACH ENOUGH RESERVATIONS TO ITS APPROVAL OF EXTENSION OF THE NUCLEAR SUPPLIERS' GUIDELINES TO BERLIN TO DEFEND THE ACTION VIS-A-VIS THE SOVIETS, BUT OBVIOUSLY IT WOULD BE PREFERABLE TO AVOID THIS UNLESS THERE IS GOOD REASON TO DISAGREE WITH THE APPARENT FRG PREFERENCE FOR OMITTING A BERLIN CLAUSE.

6. WE REFRAIN, HOWEVER, FROM RECOMMENDING THAT THE DEPARTMENT CONCUR IN THIS FRG POSITION WITHOUT CALLING

ATTENTION TO ONE POSSIBLE DANGER IN CONNECTION WITH THE BORSIG CASE. ANY ALLIED EXPRESSION OF APPROVAL OF THE OMISSION OF A BERLIN CLAUSE COULD TEND TO UNDERMINE OUR POSITION THAT IT IS THE FRG (PRESUMABLY THE AGW) WHICH SHOULD INFORM THE SENAT THAT COMPRESSOR EXPORT APPROVAL WOULD REQUIRE APPROPRIATE INDIAN ASSURANCES.

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THOSE IN THE FEDERAL GERMAN GOVERNMENT OPPOSING THIS COURSE COULD PERHAPS ARGUE THAT THE ABSENCE OF A BERLIN CLAUSE IN THE FRG NOTES PRECLUDES BONN ACTION IN THIS AREA WITH RESPECT TO BERLIN. THEY COULD ARGUE THAT NO LEGAL BASIS EXISTS FOR THE FRG BUREAUCRACY TO SEND THE DESIRED LETTER TO THE SENAT.

7. AS NOTED ABOVE, THE FRG DID NOT RAISE THIS IN JANUARY 13 BONN GROUP MEETING, AND IT IS POSSIBLE THEY WILL NOT, IN FACT, DO SO AT ALL. OUR INCLINATION IS NOT TO TAKE INITIATIVE IN RAISING THE ISSUE WITH THE FRG OURSELVES UNLESS DEPARTMENT BELIEVES IT ESSENTIAL THAT WE DO SO.

8. WE DO, HOWEVER, NEED GUIDANCE FOR SITUATION IN WHICH FRG MAKES PRESENTATION IN BONN GROUP ALONG LINES PREDICTED BY UK. GIVEN IMPORTANCE TO USG OF OUTCOME OF BORSIG CASE, WE BELIEVE IT WOULD BE BEST TO RESPOND TO ANY FRG NOTICE TO ALLIES OF INTENTION TO FOREGO BERLIN CLAUSE BY FIRST REQUESTING INFORMATION RE BASIS AND IMPLICATIONS OF FRG DECISION. WE MIGHT THEN ASK WHETHER IT WOULD BE THE INTENT OF THE FRG, EVEN IN THE ABSENCE OF A BERLIN CLAUSE IN THE JANUARY 22 NOTES, TO CONTINUE TO PROVIDE GUIDANCE TO SENAT. WE WOULD AVOID SUBSTANTIVE COMMENT ON INFORMATION PROVIDED BY FRG REP, STATING ONLY THAT IT WOULD BE REPORTED TO CAPITALS. IN SHORT, WHILE WE ARE DISPOSED TO AGREE THAT FRG NOTE SHOULD NOT HAVE A BERLIN CLAUSE, WE BELIEVE IT PREFERABLE TO AVOID SAYING SO UNTIL WE TRY TO ASCERTAIN WHETHER THE BORSIG CASE PROVIDES ULTERIOR MOTIVES FOR THE FRG POSITION. DELAYING A RESPONSE WOULD ALSO BUY TIME TO NAIL DOWN FRG COMMITMENT RE AGW LETTER TO SENAT.

9. MATTER WILL BE DISCUSSED AT JANUARY 15 TRIPARTITE MEETING.

10. ACTION REQUESTED: REQUEST URGENT GUIDANCE.  
HILLENBRAND

SECRET

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## Message Attributes

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**Copy:** SINGLE  
**Draft Date:** 14 JAN 1976  
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**Decaption Note:** 25 YEAR REVIEW  
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**Disposition Approved on Date:**  
**Disposition Authority:** saccheem  
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